IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2013 of 1994

to

FIRST APPEALNo 2028 of 1994

with

FIRST APPEAL No 2014 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL. LAND ACQ. OFFICER

Versus

DINESHBHAI KARSANBHAI PATEL

Appearance:

Mr. A.D. Oza GP and Mr. H.C> Patel, AGP for appellants.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 09/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned Government Pleader Mr.A.D.Oza and Mr. H.C.Patel, learned Assistant Government Pleader on behalf of the appellants in this group of first appeals. The respondents in this group of appeals have been served with the notice issued by this court but they have not appeared either in person or through any advocate. Therefore, the matters have been taken up for final hearing in their absence.

The reference court namely the court of the Third Extra Assistant Judge, Baroda passed an award dated 1st May, 1993 in Land Acquisition Case No.313 of 1990 consolidated with other matters. Said award has been challenged by the appellant State in this group of first appeals. The facts of the present appeals are as under:

Land Reference Cases were filed before the Reference Court by the original claimants in respect of the inadequate compensation awarded to them by the Special Land Acquisition Officer, Narmada Project, Unit IV Baroda in Land Acquisition Case No.125 of 1984. Since the reference cases were arising out of the common award made by the said Land Acquisition Officer, pursuant to an application at Exh. 6, all the reference cases were consolidated and were decided by the common impugned award by the Reference Court. Evidence has been recorded by the reference court in Reference Case No.313 of 1990. All the original claimants are the owners of the disputed land situated at village Sanoli Taluka Sankheda. Their lands were acquired by Unit IV of the Narmada Project for the construction of Miyagam Branch Canal. Notification under section 4 of the Land Acquisition Act was published on 21.6.1984. Thereafter, amended notification under section 4 of the said Act was published on 17.10.1985. Thereafter, notification under section 6 was also published on 25.10.1985. Thereafter, the notice under section 9 of the Act were published on 1.1.1986 and 18.1.1986 and the claimants were invited to submit their respective claims and accordingly, the claimants claimed the amount of Rs.25,000.00 per hectare for non irrigated

land and Rs.35,000.00 per hectare for irrigated land before the said Special Land Acquisition Officer. The Special Land Acquisition Officer passed his award on 12.3.1986 and the possession of the lands in question was taken over from the claimants from12.3.1986 to 15.3.1986. As per the award made by the Special Land ACQUISITION Officer dated 12.3.1986, he has assessed the compensation of the non irrigated land at Rs. 3500.00 per hectare and for irrigated land at Rs. 5250.00 per hectare. Since the claimants were feeling that the amount awarded for the lands in question is inadequate, they preferred the land reference cases before the Reference Court for enhancement in the amount of the award.

Before the Reference Court, it was the case of the claimants that the special land acquisition officer has not considered all the relevant aspects to assess the price of the lands in question; that the lands in question were adjoining to village site land and they were also having the facility of road; that the surrounding area of the lands in question was developed area and there were industrial estates of Bodeli, Sankheda Bhadarpura, Dabhoi, etc. and, therefore, according to the original claimants, the compensation awarded by the special land acquisition officer was very much inadequate. It was also the case of the present claimants before the Reference Court that the lands in question were coming in the vicinity which has been declared as tribal area by the Government and, therefore, industries are required to be established in the said area and on account of this fact also, the special land acquisition officer ought to have assessed the compensation at high rate; that it ought to have been appreciated by the Special Land Acquisition Officer that the crops of cotton, tuver,rice, juwar etc.were being taken from the lands in question; that it ought to have been appreciated by the Special Land Acquisition Officer that the cash crops were also being taken from the lands in question. It was the case of the claimant of the land bearing block no. 79 before the reference court that he has not been given adequate compensation of his well which has gone in the acquisition. It has also been alleged by the claimants before the reference court that the special land acquisition officer has intentionally fixed the compensation at a lower rate by considering the sale deeds of lower rate and that it has not been inquired that under what circumstances, the said sale deeds were executed at a considerable lower rate. It was also their case before the reference court that the willing vendors and willing purchasers were not examined before the special land acquisition officer and,

therefore, the amount of compensation awarded by the special land acquisition officer is required to be enhanced as inadequate.

Issues were framed by the reference court in Reference Case No. 313 of 1990 at Exh. 5 as to whether the compensation awarded by the special land acquisition officer is inadequate or not and if yes, what additional compensation should be paid to the claimants. The issues were answered in the affirmative and additional compensation was awarded by the reference court as per the final order, para 25 of the award in question against which present appeals have been filed by the State.

Before the reference court, on behalf of the original claimants, in all three witnesses namely Dushyantbhai K.Patel, Pannalal G. Baria and Chimanbhai P. Patel were examined at Exh. 14, 19 and 20. Said witnesses were examined as a vendor of the land bearing survey No. 2 situated at village Morakhala. Before the reference court, certified copy of the entry in respect of the record of rights bearing No.372 was produced at Exh. 11; certified copy of the sale deed of the land bearing survey no.72 situated at village Patra of Taluka Sankheda was produced at Exh. 12; certified copy of the sale deed of the land bearing survey no.2 situated at village Morkhala,Taluka Sankheda was produced at Exh. 13; certified copy of the judgment given by the reference court in Land Reference Case No.338 of 1991 has been produced at Exh. 25. No oral evidence was led by the opponents before the reference court but an extract of five years from the revenue record was produced by the opponents at Exh. 29; copy of the sale deed of Revenue Survey No.353 of village Morkhala at Exh.30; copy of sale deed of the revenue survey no.330A of village Morkhala at Exh.31; copy of sale deed of revenue survey no. 70 of village Sanoli at Exh.32; copy of sale deed of the revenue survey no. 289 of village Morkhala at Exh.33; copies of the sale deed of revenue survey no. 2, revenue surveyno.214/2, 215/2 and 216 of village Morkhala at Exh. 34 and 35 were produced by the opponents before the reference court.

Before the reference court, witness No.1 for the claimants namely Dushyantbhai K. Patel has deposed at Exh. 14 that the compensation decided by the Special Land Acquisition Officer relying upon the sale instances of the year 1983 is not proper; actually, they are entitled for the compensation of Rs. 35,000.00 for one hectare; his block is bearing Block No. 77 and he was having irrigated land; village Morkhala was near village

Sanoli. He has produced sale deed in respect of the sale of the land admeasuring 1 acre 04 gunthas for Rs.15,000/at Exh. 13 and has also deposed that he was irrigating his land by fetching water from the well situated in the land bearing survey no. 79. As per his deposition, said well has gone under acquisition and that except the said well, there is no other well in their village and, therefore, all the remaining lands have become non irrigated lands now. In para 9 of his deposition, it was deposed by him that the land bearing block no. 77 was running in the name of his brother in the revenue record but his brother has given him power of attorney Exh.18 in his favour. In his cross examination, it has been deposed by him that it is true that the land bearing block no. 77 is in the ownership of his brother and that he is not having any share in it. It has been denied that he does not know as to what produce was being taken and how much produce was being taken in the said land.

Another witness No.2 examined by the claimants before the reference court namely Pannalal G.Bariya who is the claimant in Reference Case No. 312 of 1990 has deposed in his examination in chief at Exh. 19 that the price of his well was about Rs.40,000.00 to Rs.45,000.00 but the Special Land Acquisition Officer has assessed the price at Rs.5250.00 which was too much on its lower side. It was also deposed by him that the amount of Rs.2700.00 has been awarded by the Special Land Acquisition Officer towards damages towards irrigation and that the said amount is also very much less. According to his deposition, the award of Rs.3500.00 per hectare is also much less. It was also deposed by him that the produce from his land was of Rs.4000.00 to Rs.5000.00 per vigha. It was also deposed by him that one liter diesel is being consumed for using the engine for one hour and that he was charging Rs.8.00 for giving water for one hour. He has deposed that he has not kept any account in respect of selling of water to surrounding fields. He has also denied that from June to October of every year, no water for the purpose of irrigation would be required. He has also deposed that his well was giving average eight hours water per day. He has admitted that the lands of Sankheda Taluka are rocky. However, he has not accepted the suggestion that on account of rocky lands, there is no water in the said land. He has also deposed that the land bearing block no. 81 and 82 are at a distance of three blocks from his land. He has also admitted that his remaining land out of the land bearing Block No. 79 is on the back of the proposed canal of the Narmada Project and in the said remaining land, he will be

getting water for the entire year and he will be in a position to get better crops in further. He has also stated that it is true that on account of the proposed canal, the price of the said remaining land has gone much higher. Another witness examined by the claimants i.e. Chimanlal P. Patel has deposed that at Exh. 20 that he was the vendor of his land bearing survey no.2 admeasuring 1 acre 04 gunthas situated at village Morkhala for Rs.15,000.00 on 10.6.1985 to Thakorbhai Devjibhai Patel and the sale deed Exh. 13 was executed in respect of the same and that he has received the sale consideration of Rs.15000.00 of his field from Thakorbhai, as per the market price prevailing at that time and that he has recovered the same as market price. On the basis of his deposition at Exh. 20, the sale deed Exh. 13 has been proved before the reference court.

We have considered the submissions made by the learned Government Pleader Mr. A.D. Oza as well as Mr. H.C. Patel, learned AGP appearing for the appellants in this group of first appeals. It was submitted by them that the reference court has committed an error in granting additional compensation to the claimants; that the reference court has committed gross error in relying upon the sale instances for the year 1985; that the reference court has committed gross error in relying upon the earlier decision given in land reference case no. 338 of 1991 in respect of the notification under section 4 of the Land Acquisition Act dated 11th October, 1984. According to their submission, the additional compensation awarded by the reference court is is highly unreasonable and contrary to the record and, therefore, orders made in the reference cases is required to be quashed and set aside by confirming the orders made by the Special Land Acquisition Officer.

We have perused the entire award made by the reference court. We have also perused the original record of the reference court. After considering the entire evidence, oral as well as documentary evidence and also after considering the decisions cited before it, has come to the conclusion that it is clear that to assess the price of the lands acquired, the price of the lands situated in the vicinity is the most important factor and the sale deeds in respect of the said lands are the best proof for it. It has also been observed by the reference court that, however, mere production is not sufficient for the purpose of proving the price of the lands acquired and that the said land was willingly sold and willingly purchased. The reference court has also observed that even post notification sales are also

relevant factors if they have no influence in regard to the other parts of the locality. After making such observations in para 20 of its award, the reference court has observed in para 21 of its award that nobody has been examined on behalf of the opponents as a willing buyer or willing vendor to support the sale deeds at Exh. 30, 31, 32, 33 and 35. The reference court was of the view that the special land acquisition officer has considered the sale deeds Exh.30 and 31 but they have been executed in the year 1980 - 1981 and was of the view that they were of the period much prior to the publication of the notification under section 4 of the said Act in respect of the land in question. The reference court has also held that it has been proved that the villages Patra, Morkhala and Sanoli are situated adjoining to each other and that the special land acquisition officer has also considered in his award that there is much similarity between the prices of the lands in the said vicinity and the sale deeds executed in the said area are the relevant factors to assess the value of the lands under acquisition. The reference court has also considered the sale deed produced by the claimants at Exh. 12 which was in respect of the sale of the land at village Patra, at the rate of Rs.10290.00 per hectare on 31.3.1975. After considering the sale deed at Exh. 12, it was observed by the reference court that the prices of the lands are showing the trend to go up and, therefore, in the year 1984, when the lands in question were acquired, after about nine years, naturally, the prices of the lands must have gone up and not lowered down. The reference court has also kept in mind that the vendors or the purchasers of the said lands were not examined and has then observed that, however, it should be considered while assessing the value of the lands in question. The reference court has also considered that both the parties have relied upon the sale deed of the land bearing survey No. 2 situated at village Morkhala which was executed on 10.6.1985, at Exh. 13 and 34 and has observed that as per the said sale deeds, the land has been sold at the rate of Rs.33,710.00 per hectare and has further observed that from both the above sale deeds, it clearly appears that there was upward trend of the prices of the lands in the area of the lands under acquisition because in the year 1975, the land was sold at the rate of Rs.10290.00 per hectare; in the year 1985, at the rate of Rs.33,710.00 per hectare as stated earlier. The reference court has also observed that the land as per the sale deed at Exh. 13 and 34 is a small land admeasuring 44 Are 52 square meters and it has been purchased by the owner of the adjacent land and, therefore, naturally, on account of consolidation of the

lands, the purchaser was to get the benefit and hence he must have paid higher price and has further observed that though the vendor of the said land Chimanbhai P. Patel has sold his land at the market price only, it cannot be accepted as a gospel truth; moreover, the said land has been sold after publication of the notification under section 4 in respect of the lands in question under acquisition and, therefore, it cannot be accepted as it is, however, said sale deed can be considered for assessing the amount of compensation. Then, in para 22 of the award in question, the reference court has also considered the judgment given in land reference case no. 338 of 1991 at Exh. 25 wherein notification under sec.4 of the Act was published on 11.10.1984 in respect of the non irrigated land of village Morkhala and the price of the said lands were assessed at Rs.12,000.00 per hectare. After considering the said award, the reference court was of the view that the said award has no effect at all over the future transactions or the past transactions and, therefore, said award is the most reliable piece of evidence for assessing the value of the lands situated in the vicinity of the present lands under acquisition and, therefore, relying upon the evidence on record and considering the award dated 10th July, 1992 in Reference Case No. 338 of 1991 Exh.25, the reference court was of the view that the special land acquisition officer ought to have assessed the value of the lands under acquisition at the rate of Rs.12,000.00 per hectare for non irrigated land and Rs.18,000.00 per hectare for irrigated land. The reference court has also considered the discussion made by the special land acquisition officer in para 11(a) of the award wherein the special land acquisition officer has assessed the irrigated land at the rate of Rs.5250.00 per hectare and Rs.3500.00 for non irrigated land per hectare and was of the view that the award of Rs.5640.00 for damages for the loss of well is not adequate and after considering the evidence on record, the reference court was of the view that the total compensation of the well was required to be assessed at Rs.20,000.00, after taking into consideration the oral evidence of the witness Pannalal G.Baria at Exh. 19.

On the basis of these observations made and conclusions drawn by the reference court, Tabular B was prepared by the reference court and all the sixteen cases were allowed by the reference court by granting additional compensation to each of the respective claimants as mentioned in column 12 of the tabular form at page 32. We have perused the said Form wherein details have been given by the reference court regarding measurement, value of the land at the rate of Rs.12000.00

per hectare for non irrigated land and Rs.18,000.00 for irrigated land; 12 per cent additional compensation from 7.8.1984 to 12.3.1986 for 19 months; additional total compensation for well; 5 per cent deduction on account of new tenure land; amount awarded and the additional compensation to be paid. Details have been given by the reference court in respect of each of the land and we have also perused it in each case. According to our opinion, the reference court has rightly examined and assessed the price of the land in question and was also right in granting additional compensation under the impugned award made by it for the land in question as well as the well situated therein. The reference court was also right in relying upon the evidence of the witness Shri P.G. Bariya for determining the compensation in respect of the well at Rs.20,000.00. In our opinion, the reference court was quite right in relying upon the previous award made by it at Exh. 25 in respect of the lands of village Morkhala. According to our considered opinion, the reference court has rightly considered the sale transactions vide Exh. 13 and 34 and was right in observing that there was upward trend of price in the area wherein the lands in question were acquired. As per our opinion, the reference court was also right in considering the judgment given in land reference case no. 338 of 1991 at Exh. 25 wherein notification under sec.4 of the Act was published on 11.10.1984 in respect of the non irrigated land of village Morkhala and the price of the said lands were assessed at Rs.12,000.00 per hectare. The reference court was also right in holding that the said award has no effect at all over the future transactions or the past transactions and, therefore, said award is the most reliable piece of evidence for assessing the value of the lands situated in the vicinity of the present lands under acquisition and, therefore, relying upon the evidence on record and considering the award dated 10th July, 1992 in Reference Case No. 338 of 1991 Exh.25, the reference court rightly viewed that the special land acquisition officer ought to have assessed the value of the lands under acquisition at the rate of Rs.12,000.00 per hectare for non irrigated land and Rs.18,000.00 per hectare for irrigated land. Therefore, there is no error committed by the reference court in awarding the additional compensation after considering the evidence on record as well as the earlier award made by it in reference case no.338 of 1991. Therefore, the contention raised by Mr. Oza, learned Government Pleader as well as Mr. Patel, learned AGP that the reference court has committed error in awarding additional compensation in respect of the land in question as also the well cannot be accepted.

According to our opinion, there is no error committed by the reference court and the award made by the reference court does not require any interference of this court in this group of appeals. Therefore, all these first appeals are required to be dismissed. Accordingly, these first appeals are dismissed with no order as to costs.

9.9.2002. (Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

Vyas